



Billing Code 6325-63

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN: 3206-AN54

Federal Employees Health Benefits Program Flexibilities

AGENCY: Office of Personnel Management

ACTION: Proposed Rule.

SUMMARY: To correct an asymmetry in the insurance market for Federal employees and annuitants, this proposed regulation provides all Federal Employees Health Benefits (FEHB) Program carriers the ability to offer the same number and types of plan options. Currently, OPM regulations defining minimum standards for health benefits plans allows certain plans to have two options and a high deductible health plan, while other plans may have three options of any type or two options and a high deductible health plan, creating an asymmetry between the potential offerings of health benefits plans. We are revising the regulations so all health benefits plans are able to offer three options or two options and a high deductible health plan. This rule will give FEHB enrollees more health plan choices allowing them to select a health plan that best meets their family's health care needs.

DATES: OPM must receive comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or

Regulatory Information Number (RIN) and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Michael Kaszynski, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW, Washington, DC. 20415

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Senior Policy Analyst, at Michael.Kaszynski@opm.gov or (202) 606-0004.

SUPPLEMENTARY INFORMATION:

Authority For This Rulemaking

The Federal Employees Health Benefits (FEHB) Program is administered by the Office of Personnel Management (OPM) in accordance with Title 5, Chapter 89 USC and our implementing regulations (Title 5, Part 890 and Title 48, Chapter 16). The statute establishes the basic rules for benefits, enrollment, and participation. OPM is authorized to contract with health insurance carriers; approve health plans for participation in the program; negotiate with carriers about benefit and premium levels; determine the times and conditions for an annual open enrollment period known as “open season” during

which eligible individuals may elect coverage or change plans; make information available to employees concerning plan options; evaluate health plans on key parameters of clinical quality, customer service, resource use in comparison with national benchmarks and contract oversight requirements; apply administrative sanctions to health care providers that have committed certain violations; and administer the program's financing.

OPM is also responsible for maintaining the funds that hold contingency reserves for the plans and the fund that receives premium payments from enrollees and Federal agencies, from which premiums are disbursed to participating plans. OPM determines whether retiring employees or survivor annuitants meet the requirements to continue health insurance coverage; takes the action necessary to terminate, accept, or continue enrollment; oversees the automatic deduction of premiums from monthly annuity checks and credits the premiums, along with the applicable Government contribution, to the proper account; processes all enrollment changes; notifies affected carriers of enrollment changes; and keeps enrolled retirees advised of rate and benefit changes within their plan.

Background

The Federal Employees Health Benefits (FEHB) Program provides health insurance to about 8.2 million Federal employees, retirees, and their dependents each year. It is the largest employer-sponsored health insurance program in the country providing more than \$53 billion in health care benefits annually. Eligible individuals include Federal employees, retirees, and their family members. As of May 2012, certain Indian tribal employers began purchasing coverage for their employees. Coverage

options available to eligible individuals include individual or family coverage in an approved health benefits plan. Beginning in calendar year 2016, individuals have a third coverage option: self plus one coverage for themselves and one eligible family member.

Generally, available health benefits plans fall into two broad categories: fee-for-service (FFS) or health maintenance organizations (HMOs). FFS plans tend to be available nationwide, and HMOs tend to be locally available. Based on our March 2017 headcount reports, 16 percent of all contracts are enrolled in HMO plans and 84 percent are enrolled in FFS plans. Premiums are shared between the Federal Government and the employee or retiree. Benefits and cost sharing vary among FEHB plans, but all plans must cover basic services such as hospital and physician care and may require cost sharing in the form of deductibles, co-payments, or coinsurance. FEHB financing includes Government contributions to premiums, policyholder contributions to premiums, contingency reserves in the U.S. Treasury to offset unexpected increases in costs, and administrative expenses incurred by OPM.

By statute, Government and the employee or retiree share the cost of health insurance, with the Federal Government contributing 72 percent of the weighted average premium of all plans but no more than 75 percent of any given plan's premium, with the exception of employees of the United States Postal Service (USPS), whose share of the premium is collectively bargained and certain other exempted agencies.

Title 5 U.S.C. §8903 specifies the types of health plans with which OPM may contract for FEHB. Enrollees choose a health plan from a health insurance carrier that offers one or more plans. There are currently 262 different health plan options to choose

from. As a practical matter, depending on where an enrollee resides, his or her choice of plans is limited to about 15 different plans on average.

Individuals may enroll or change plans during the FEHB annual open season, or through a Qualifying Life Event (QLE), such as marriage. Plan offerings in terms of benefits and premiums may change during each open season. Details for all FEHB plans are available on OPM's website at <https://www.opm.gov/healthcare-insurance/healthcare/plan-information/plans/>.

Summary of Current Health Plan Options

Generally, health insurance carriers and their health plans fall into two broad categories: fee-for-service (FFS) plans (plans under 5 U.S.C. 8903(1) (2) and (3)) or health maintenance organizations (HMOs)(plans under 5 U.S.C. 8903(4)). FFS plans are generally available nationwide, and HMOs tend to be locally available.

FFS plans and HMOs are structured differently. Enrollees may base their decision to join a FFS plan or an HMO based on a variety of factors, such as whether they already have a preferred medical provider and where they live. However, a key difference for enrollees is the flexibility that FFS plans usually provide around the use of out-of-network providers. FFS plans are more likely to allow access to out-of-network providers, with increased out-of-pocket costs, than HMOs.

The FEHB Program typically offers about 19 FFS plans that are available nationally across the Federal Government (although 4 are open only to certain types of Federal employees). Many FFS plans have a preferred provider organization (PPO) whereby medical providers have contracted with the health plan to offer discounted charges. Enrollees may choose providers outside of the PPO but will pay a larger share of

the cost of services from these providers. Some FFS plans only offer in-network providers, except in emergencies.

Discussion of the Proposed Changes

To correct an asymmetry in the insurance market for Federal employees and annuitants, this proposed regulation provides all Federal Employees Health Benefits (FEHB) Program carriers the ability to offer the same number and types of plan options. Currently, OPM regulations at 5 CFR 890.201 on minimum standards for health benefits plans allows 5 U.S.C. 8903(1) and (2) to have two options and a high deductible health plan, but plan types under 5 U.S.C. 8903(3) and (4) may have three options or two options and a high deductible health plan creating an asymmetry between the potential offerings of types of health benefits plans. We are revising the regulations so all health benefits plans under 5 U.S.C. 8903 have the language that includes three options or two options and a high deductible health plan. This will give enrollees additional options when considering which health plan is best suited for them, for example, using a variety of variables such as premium, co-pay, and deductible costs, provider networks, and referral and pre-authorization policies. Since all health plans must compete annually for enrollees, adding additional options could create an incentive for plans to keep premiums as low as possible to attract enrollees. This regulation fully aligns with the Administration's goal of promoting affordable health plan choices.

Expected Impact of Proposed Changes

The FEHB Program currently contracts with 83 health plan carriers which offer a total of 262 health plan options. These proposed changes are projected to create two additional plan options in the FEHB Program.

OPM expects that this regulatory change allowing an increase in the number plan options will have a positive effect on the market dynamics in the FEHB Program by potentially increasing competition between health plans. This regulatory change will allow health plans under 5 U.S.C. 8903(1) and (2) to offer lower cost, higher quality options to better serve FEHB Program enrollee interests.

It is difficult to anticipate potential changes in enrollment due to this regulatory change because our regulations have previously prohibited plans in these statutory categories from having three options. However, we anticipate that a portion of enrollees will move to lower cost, higher quality options because OPM will ensure that additional options are distinct and meet enrollee interests and enrollees will have access to adequate information to understand the available plan options.

While this rule will allow another option for certain carriers, a carrier is not mandated to offer a new option and this regulation does not increase the number of insured individuals in the FEHB Program. If a current enrollee enrolls in one of the new plan options they will be disenrolled from their old one.

OPM does not believe that this regulation will have a large impact on the broader health insurance market since FEHB generally constitutes a smaller percentage of the overall health insurance carrier's book of business. OPM also believes that employees and annuitants make their health care decisions based on a variety of factors, including

networks, premiums, etc., so changes in plan enrollments will be determined by individual choice. However, because OPM does not have extensive data to determine the impact of this regulation, we are seeking comments on the following:

1. How will the changes made by this regulation impact the broader health insurance market?
2. How will the changes made by this regulation impact the enrollment of annuitants compared to employees?
3. How will the regulation impact changes to enrollment in the FEHB Program?

Executive Order Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” under Executive Order 12866.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves an OMB approved collection of information subject to the PRA -- OMB No. 3206-0160, Health Benefits Election Form. The public reporting burden for this collection is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 9,000 hours. The systems of record notice for this collection is: OPM/Central 1 Civil Service Retirement and Insurance Records, available at <https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-central-1-civil-service-retirement-and-insurance-records.pdf>.

The FEHB Program currently has a total of 262 health plan options for employees to choose from for their health benefits coverage. Historically, about 18,000 of FEHB participants switch health care plans in any given year. This regulation has the potential to add two new enrollment codes representing new plan options and is not anticipated to significantly change the burden associated with this collection.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to formsmanager@opm.gov. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

EO 13771: Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an EO 13771 deregulatory action as it addresses an asymmetry in the Federal Employees Health Benefits (FEHB) Program market by allowing all carriers to offer three plan options. Additional information can be found in the “Expected Impact of Proposed Changes” section of the rule.

List of Subjects in 5 CFR Parts 890

Administration and general provisions; Health benefits plans; Enrollment, Temporary extension of coverage and conversion; Contributions and withholdings; Transfers from retired FEHB Program; Benefits in medically underserved areas; Benefits for former spouses; Limit on inpatient hospital charges, physician charges, and FEHB benefit payments; Administrative sanctions imposed against health care providers; Temporary continuation of coverage; Benefits for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon; Department of Defense Federal Employees Health Benefits Program demonstration project; Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Kathleen M. McGettigan

Acting Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111-148, as amended by Pub. L. 111-152.

2. Amend § 890.201 by revising (b)(3)(i) to read as follows:

§ 890.201 Minimum standards for health benefits plans.

(b) ***

(3)(i) Have either more than three options, or more than two options and a high deductible health plan (26 U.S.C. 223(c)(2)(A)) if the plan is described under 5 U.S.C. 8903(1), (2), (3) or (4).

§ 890.201 [Amended]

3. Amend § 890.201 by removing paragraph (b)(3)(ii).

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